

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

WILLIAM REVOAL,

Plaintiff,

v.

BAKERSFIELD MEDICAL CENTER, et
al.,

Defendants.

1:22-cv-00801-ADA-SKO (PC)

**ORDER VACATING FINDINGS AND
RECOMMENDATIONS TO DISMISS
ACTION FOR FAILURE TO OBEY
COURTS ORDERS AND FAILURE TO
PROSECUTE**

(Doc. 16)

**ORDER GRANTING EXTENSION OF
TIME WITHIN WHICH TO FILE FIRST
NOTICE OF VOLUNTARY DISMISSAL
OR FIRST AMENDED COMPLAINT**

Plaintiff William Revoal is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

I. INTRODUCTION

On June 7, 2023, this Court issued its First Screening Order. (Doc. 14.) The Court found Plaintiff's complaint failed to state a claim upon which relief could be granted. (*Id.* at 4-10.) Plaintiff was ordered to either file a first amended complaint or a notice of voluntary dismissal within 21 days of the date of service of the order. (*Id.* at 11.)

On July 10, 2023, when Plaintiff had failed to file either a first amended complaint or a notice of voluntary dismissal, the Court issued Findings and Recommendations to Dismiss Action for Failure to Obey Court Orders and Failure to Prosecute. (Doc. 16.) Plaintiff was to file any objections within 14 days of the date of service. (*Id.* at 4.)

1 On July 17, 2023, Plaintiff filed a Notice of Change of Address. (Doc. 17.) The document
2 is signed and dated June 13, 2023. (*Id.*) Included with the notice is correspondence directed to the
3 Clerk of the Court, also dated June 13, 2023. (*Id.* at 2.) On that same day, the Clerk of the Court
4 re-served Plaintiff with the Findings and Recommendations issued July 10, 2023, at his new
5 address. (*See* Docket Entry dated 7/17/23.)

6 II. DISCUSSION

7 In his correspondence filed July 17, 2023, concurrently with his notice of change of
8 address, Plaintiff states he is no longer in prison and asks the Court to mail him the “final order
9 from the judge; ‘Dismiss without prejudice,’ because [he] chose not to respond to the last order.”
10 (Doc. 17 at 2.) Plaintiff states he is going to “get an attorney and refile correctly with all the
11 request and recommendations the court made in the last order.” (*Id.*)

12 Plaintiff appears to be referring to the Court’s First Screening Order issued June 7, 2023.
13 (*See* Doc. 14.) That order references a potential dismissal without prejudice and would have been
14 received by Plaintiff before his notice of change of address dated and signed June 13, 2023. And,
15 although the Findings and Recommendations to dismiss for a failure to obey court orders and
16 failure to prosecute have not been returned as undeliverable by the United States Postal Service—
17 because Plaintiff indicates his address changed from Golden Legacy Care Center to the Rio
18 Hondo Nursing Center as of June 13, 2023—Plaintiff may not have received the Court’s July 10,
19 2023, findings. It is also possible that while Plaintiff signed and dated his notice of change of
20 address on June 13, 2023, he did not mail that document until after he received the Court’s July
21 10, 2023, findings. This would explain the delay between the signed and dated notice of change
22 of address—June 13, 2023—and the date the document was filed with the Court on July 17, 2023.

23 In any event, it is apparent Plaintiff intends to seek the assistance of counsel to “refile”
24 this action. Out of an abundance of caution, the Court will vacate its July 10, 2023, findings and
25 will grant Plaintiff an extension of time within which to file a notice of voluntary dismissal, or,
26 alternatively, to file an amended complaint, as previously directed. Plaintiff is advised that by
27 filing a notice of voluntary dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i)
28 in this action, the dismissal would be without prejudice and would not bar Plaintiff from refileing

1 this claim or claims in a subsequent action should he obtain legal counsel or elect to proceed *pro*
2 *se.*

3 **III. CONCLUSION AND ORDER**

4 For the reasons set forth above, **IT IS HEREBY ORDERED** that:

- 5 1. The Findings and Recommendations issued July 10, 2023 (Doc. 16) are **VACATED**;
6 2. Plaintiff **SHALL** file a notice of voluntary dismissal, or, alternatively, a first amended
7 complaint, **within 21 days** from the date of service of this order; and
8 3. Plaintiff is advised that should he fail to obey this order, the Court will reissue
9 findings and recommendations to dismiss this action for a failure to obey court orders
10 and failure to prosecute.

11 IT IS SO ORDERED.
12

13 Dated: **August 4, 2023**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE